

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-476-C - ORDER NO. 2010-
MARCH __, 2010

IN RE: Application of Optic Internet Protocol, Inc.)	ORDER GRANTING
for a Certificate of Public Convenience and)	CERTIFICATE OF
Necessity to Provide Resold Interexchange)	PUBLIC CONVENIENCE
Telecommunications Services and for)	AND NECESSITY
Alternative Regulation of its Interexchange		
Service Offerings		

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of Optic Internet Protocol, Inc. (“Optic” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2009) and the rules and regulations of the Commission. By its Application, Optic also requests alternative regulation of its business interexchange services consistent with Commission Orders, and waiver of certain Commission regulations.

The Commission’s Docketing Department instructed Optic to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Optic and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Optic complied with this instruction and provided the

Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

Subsequently, a hearing was convened on March 8, 2010, at 11:30 a.m. in the offices of the Commission in Columbia, South Carolina, before F. David Butler, Esquire, Hearing Examiner. Optic was represented by John J. Pringle, Jr., Esquire. The South Carolina Office of Regulatory Staff (“ORS”) was represented by Shannon Bowyer Hudson, Esquire. At the outset of the hearing, the Applicant and the ORS entered a Stipulation into the record. The Stipulation is attached hereto as Order Exhibit 1.

Gregory Allpow, the President of Optic, testified in support of the Company’s Application. The record reveals that Optic is a Corporation organized under the laws of Delaware and duly authorized to transact business in South Carolina. According to Mr. Allpow, the Company seeks authority as a reseller of interexchange services. Mr. Allpow explained the Company’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures. The Company intends to market its services by telemarketing. Mr. Allpow also discussed Optic’s technical, financial, and managerial resources to provide the services for which it seeks authority.

With regard to technical, financial, and managerial capabilities, the Company’s Application and Mr. Allpow’s testimony both evidence that Optic’s management team has experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Allpow also testified that Optic will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. Allpow offered that approval of Optic’s Application would serve the public interest.

Mr. Allpow testified that the Company is financially qualified to operate and manage its proposed telecommunications operations in South Carolina.

Mr. Allpow, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in another state. Mr. Allpow also requested that it be exempt from any financial recording rules or regulations that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts ("USOA"), but that it maintain its books and records in accordance with Generally Accepted Accounting Principles ("GAAP").

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Optic is incorporated under the laws of the State of Delaware and is authorized to do business in South Carolina by the Secretary of State.
2. Optic desires to operate as a provider of resold interexchange services in South Carolina.
3. We find that Optic possesses the managerial, technical, and financial experience and capability to operate as a provider, through resale, of interexchange services in South Carolina.
4. We find that the issuance of a Certificate of Public Convenience and Necessity to Optic to operate as a reseller of interexchange services in South Carolina would be in the best interest of the citizens of South Carolina by providing more innovative services.

5. Optic requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds Optic's requested waivers reasonable and understands the potential difficulty presented to Optic should the waivers not be granted.

6. The Company has the managerial, technical, and financial resources to provide the services as described in its Application.

7. The Stipulation between the Applicant and the ORS is fair and reasonable and in the public interest.

CONCLUSIONS OF LAW

1. The Commission concludes that Optic possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the issuance of the authority to provide intrastate interexchange telecommunications services as requested by Optic and as set forth in its Application and Mr. Allpow's testimony is in the best interests of the citizens of the State of South Carolina.

3. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Optic to provide resold intrastate interexchange telecommunications services.

4. The Commission adopts a rate design for Optic for its residential interexchange services, if any, which include maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint*

Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. Optic shall not adjust its residential interexchange rates for end-users, if any, below the approved maximum level without notice to the Commission and to the public. Optic shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications, etc.*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2008).

6. The Commission concludes that Optic's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and

operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

7. We conclude that Optic’s request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted, since strict compliance with the regulation would potentially cause undue hardship on that Company. We also grant exemption from the policies requiring the use of the USOA.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. The Stipulation between the Applicant and the ORS is approved as being fair and reasonable and in the public interest.

A Certificate of Public Convenience and Necessity should be granted to Optic to provide intrastate interexchange services through the resale of services authorized for resale by tariffs of carriers approved by the Commission within the State of South Carolina.

2. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, Optic shall file its revised tariff utilizing the Commission's e-filing system for tariffs. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

We find that GABN does not intend to offer prepaid calling card services but, in the event that GABN in the future offers or provides such a service, GABN shall post a surety bond or certificate of deposit for prepaid calling card and long distance services in the amount of \$5,000 as required by the Commission

4. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. Optic shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Optic changes underlying carriers, it shall notify the Commission and the ORS in writing.

7. With regard to the origination and termination of toll calls within the same LATA, Optic shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Optic shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. Optic shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Optic shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be

found at the ORS website at www.regulatorystaff.sc.gov, and the appropriate form is entitled “Gross Receipts Form.”

Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund ("USF") Contribution Worksheet, which may be found on the ORS's website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **July 1st** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Optic shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS website at www.regulatorystaff.sc.gov; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are changed.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, Optic requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2008). The Commission finds Optic's requested waiver reasonable and understands the potential difficulty presented to Optic should the waiver not be granted. The Commission therefore grants the requested waiver. However, Optic shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and Optic shall promptly notify the Commission and ORS if the location of its books and records changes. Optic also requested that it be allowed to maintain its books and records in accordance with the Generally Accepted Accounting Principles ("GAAP"). This Commission also grants this request.

12. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Elizabeth B. Fleming, Chairman

ATTEST:

John E. Howard, Vice Chairman

(SEAL)